

UNAPPROVED - DRAFT

BOARD OF DENTISTRY

MINUTES

SPECIAL CONFERENCE COMMITTEE "C" MEETING

- TIME AND PLACE:** Special Conference Committee "C" convened on March 23, 2007, at 1:05 p.m., at the Department of Health Professions, 6603 W. Broad Street, Richmond, Virginia.
- APPROVAL OF MINUTES:** Ms. Sissom moved to approve the Minutes of the Special Conference Committee "C" meeting held on January 19, 2007. The motion was seconded and passed.
- FIRST CONFERENCE:** 1:05 p.m.
- PRESIDING:** James D. Watkins, D.D.S.
- MEMBERS PRESENT:** Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.L.
- STAFF PRESENT:** Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Gail W. Ross, Adjudication Specialist
- QUORUM:** All three members of the Committee were present.
- Richard A. Smith, D.D.S.
Case No. 90844** Richard A. Smith, D.D.S., appeared without counsel, to discuss allegations that he may have violated laws and regulations governing the practice of dentistry, in that, on or about June 6, 2000, he may have improperly removed bridgework from the lower right quadrant of Patient A, in that in doing so, he extracted teeth #28 and #29 along with the bridge and the crown on tooth #32, leaving Patient A toothless in the lower right posterior.
- The Committee received Dr. Smith's statements and discussed the evidence in the case with him.
- Closed Meeting:** Ms. Sissom moved that the Committee convene a closed meeting pursuant to § 2.2-3711(A)(28) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Richard A. Smith, D.D.S. Additionally, Ms. Sissom moved that Board staff, Sandra Reen and Cheri Emma-Leigh, and Administrative Proceedings Division staff, Gail Ross, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Committee

in its deliberations. The motion was seconded and passed.

Reconvene:

Ms. Sissom moved to certify that only matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Committee. The motion was seconded and passed.

The Committee reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision:

Ms. Ross read the Findings of Fact and Conclusions of Law as adopted by the Committee as follows:

1. Dr. Smith holds a current Virginia dental license;
2. Allegation #1 as stipulated: Dr. Smith violated § 54.1-2706(5) and (11) of the Code, in that, on or about June 6, 2000, he improperly removed bridgework from the lower right quadrant of Patient A in that, in doing so, he extracted teeth #28 and #29 along with the bridge and the crown on tooth #32, leaving Patient A toothless in the lower right posterior. By his own admission, in his narrative report dated November 19, 2003, he was “over zealous” in using the crown and bridge remover.
3. Dr. Smith acknowledges that he would not proceed in the same manner, and offered the following alternatives to his action:
 - a. he would cut off the bridge; or
 - b. he would have referred Patient A to an endodontist.
4. The Committee determined that the regrettable incident, described in Finding of Fact #2, is an inherent risk of the procedure when using a crown and bridge remover.

Dr. Pirok moved that the Committee adopt the Findings of Fact and Conclusions of Law, and that no sanctions be imposed as reported by Ms. Ross. The motion was seconded and passed.

As provided by law, this decision shall become a Final Order thirty days after service of such on Dr. Smith unless a written request to the Board for a formal hearing on the allegations made against him is received from Dr. Smith. If

service of the order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Committee shall be vacated.

SECOND CONFERENCE:

3:00 p.m.

PRESIDING:

James D. Watkins, D.D.S.

MEMBERS PRESENT:

Misty L. Sissom, R.D.H.

MEMBER ABSENT:

Darryl J. Pirok, D.D.S.

STAFF PRESENT:

Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Cynthia E. Gaines, Adjudication Specialist

QUORUM:

With two members of the Committee present, a quorum was established.

**Marlin F. Rekow, D.D.S.,
Case Nos. 76085, 77207,
82441 and 92336**

Marlin F. Rekow, D.D.S., appeared with counsel, Christopher R. Rau, Esq., to discuss allegations that he may have violated laws and regulations governing the practice of dentistry in that:

1. On August 26, 2003, Patient A presented to his practice for completion of root canal therapy on tooth #13. When Patient A was not seen at the appointed time she attempted to reschedule her appointment. Without examination or referral by a treatment provider, Dr. Rekow allowed his office manager to determine that Patient A needed to be referred to a specialist. Further, he allowed his office manager to dismiss Patient A from his practice;
2. Dr. Rekow failed to provide direction of dental assistants in the orthodontics department. Dental assistants were allowed to provide treatment to patients without their work being checked Dr. Rekow or his staff dentist;
3. Dr. Rekow allowed Dentist B, who does not hold a dental license in the Commonwealth of Virginia, to see some of his patients at his offices. Further, he allowed

Dentist B to review his patients' records and make treatment recommendations;

4. Dr. Rekow filed fraudulent insurance claims. Specifically:
 - a. Dr. Rekow billed Patient C's dental insurer for root canal therapy on tooth #14, identifying the date of service as January 5, 1999. Dental records for Patient C reflect that the root canal therapy was actually performed on October 26, 1998. Further, he billed Patient C's dental insurer for a core build-up for tooth #14 identifying the date of service as January 10, 1999. Patient C's dental records reflect that the procedure was rendered on November 11, 1998.
 - b. Dr. Rekow's office filed an insurance claim with Patient D's carrier for a crown seated on tooth #19 by a staff dentist in his practice on August 22, 2000. Subsequently, on September 17, 2001, Patient D presented to his office for an emergency visit related to tooth #19. Dr. Rekow documented that the crown needed to be redone due to poor margin on the mesial, and billed Patient D's new insurance carrier for a new crown on tooth #19.
 - c. Dr. Rekow filed a claim for a service provided to Patient E on April 15, 2001, under the name of Employee F as the provider, when, in fact, Employee F had left his practice in January 2000.
5. Patient G requested a copy of her dental records, however Dr. Rekow refused to provide her with a copy of the same. By his own admission, his office policy is not to release patient dental records to patients with an outstanding balance; and
6. On August 18, 2004, an unannounced inspection was conducted on Dr. Rekow's practice, which found the

following deficiencies:

- a. The display board with the names of dentists working in his practice was not current, and was not located at the entrance of the practice.
- b. Framed copies of licenses were not current and the expiration dates were not visible. Further, the copies were not notarized and were not placed in an area visible to the public.
- c. Radiation certificates were not posted in view of the public.
- d. He failed to take a biennial inventory of Schedule II-V controlled substances. Specifically, he failed to maintain a biennial inventory for Midazolam (C-IV).

The Committee received Dr. Rekow's statements for two (2) of the six (6) allegations stipulated in the Notice of Informal Conference.

Closed Meeting:

Ms. Sissom moved that the Committee convene a closed meeting pursuant to § 2.2-3711(A)(28) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Marlin F. Rekow, D.D.S. Additionally, Ms. Sissom moved that Board staff, Cheri Emma-Leigh, and Administrative Proceedings Division staff, Cynthia Gaines, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Committee in its deliberations. The motion was seconded and passed.

Reconvene:

Ms. Sissom moved to certify that only matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Committee. The motion was seconded and passed.

The Committee reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision:

Dr. Watkins reported that the Committee decided to refer the matter to the Board for a Formal Hearing as Dr. Rekow was unable to address questions about treatment and treatment providers. Ms. Sissom moved that the Committee's decision to refer the case to a Formal Hearing be adopted. The motion was seconded and passed.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 4:26 p.m.

James D. Watkins, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date